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In the

Supreme Court of the United States

LEGAL SERVICES CORPORATION,

Petitioner,

v.

CARMEN VELAZQUEZ, *et al.*,

Respondents,

UNITED STATES OF AMERICA,

Petitioner,

v.

CARMEN VELAZQUEZ, *et al.*,

Respondents.

On Writs of Certiorari to the United States
Court of Appeals for the Second Circuit

BRIEF OF THE NEW YORK STATE BAR ASSOCIATION, *ET AL.*, *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST[1]

Amici curiae are the New York State Bar Association; the Association of the Bar of the City of New York; the New York County Lawyers' Association; the Oregon State Bar; the Pennsylvania Bar Association; the Vermont Bar Association; the Brooklyn Bar Association; the Chicago Council of Lawyers; the Essex County Bar Association; the Lesbian and Gay Law Association of Greater New York, Inc.; the Women's Bar Association of the State of New York; the Association of Legal Aid Attorneys, UAW Local 2325; the Legal Aid Society of New York City; the National Organization of Legal Services Workers, UAW Local 2320; the Center for Ethics and Public Service at the University of Miami School of Law; the Center for the Teaching of Legal Ethics at William and Mary Law School; the Jacob Burns Center for Ethics in the Practice of Law at the Benjamin N. Cardozo Law School; the Louis Stein Center for Law and Ethics at Fordham University Law School; AARP; the Children's Defense Fund; Legal Counsel for the Elderly, Inc.; the Mexican American Legal Defense and Educational Fund ("MALDEF"); the National Association of Protection and Advocacy Systems; the National Center on Poverty Law; the National Partnership for Women and Families; the National Senior Citizens Law Center; the NOW Legal Defense and Education Fund, Inc.; People For the American Way Foundation; the Welfare Law Center; the Coalition of California Welfare Rights Organizations ("CCWRO"); the Federation of Protestant

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[1] All parties have consented to the appearance of *amici curiae* in this matter, and letters of consent have been lodged with the Clerk of the Court. Pursuant to Sup. Ct. R. 37.6, counsel for *amici* state that this brief was not authored in any part by counsel for any party. No person or entity, other than *amici* and their counsel, made a monetary contribution to the preparation and submission of this brief.

Welfare Agencies, Inc.; Housing Works; Low-Income Families' Empowerment Through Education ("LIFETIME"); the Massachusetts Welfare Rights Union; the Mon Valley Unemployed Committee; the National Campaign for Jobs and Income Support; North Brooklyn Welfare Education and Community Advocacy Network ("WE CAN"); the Reform Organization of Welfare ("ROWEL"); and Welfare Warriors. Brief individual statements identifying *amici* are set forth in Appendix A.

Amici jointly file this brief to express their collective opposition to the restriction at issue in this case, which requires lawyers who receive funding from the Legal Services Corporation ("LSC") to provide representation in public assistance cases according to "second-tier ethics," – *i.e.*, in a manner inconsistent with ordinary professional standards. The restriction requires lawyers to, in some instances, provide less than competent representation, restrict the scope of representation according to impermissible terms, and deny clients the authority to make decisions otherwise entrusted to clients. *Amici* also file this brief to express their concern about the effect of the restriction on the rights of welfare recipients and the lawful progress of welfare reform.

As the organizations that develop standards of professional conduct for lawyers and safeguard the integrity of the legal profession, *amici* bar associations are alarmed by the restriction's requirement that LSC-funded lawyers provide representation in a manner that is inconsistent with ordinary ethical and professional standards and by its intrusion upon the authority of states courts to define the ethical standards governing lawyers' professional responsibilities. Having conducted studies on and otherwise monitored unmet legal needs of the poor in their regions, *amici* bar associations are painfully aware that there are not sufficient alternative resources for civil legal representation

for the poor. Thus, the restriction creates a Hobson's choice – the poor may have lawyers who are forced to operate according to second-tier ethics and practice, or none at all.

Like the bar associations, *amici* law school legal ethics centers are concerned about the intrusion into the code of ethics governing the legal profession that the restriction represents. *Amici* law school legal ethics centers join the bar associations in their analysis of the restriction as requiring LSC-funded lawyers to either provide sub-standard representation, or decline representation in cases concerning public assistance.

Amici legal services organizations and not-for-profit legal organizations are greatly concerned about the effect of the restriction on lawyers' ability to zealously represent their clients, and to help the states implement welfare reform in a manner that is consistent with state and federal legislative and constitutional requirements. *Amici* know from experience that constitutional and statutory arguments are necessary in a broad variety of cases, and that the need to raise such arguments on behalf of a particular client cannot always be identified in advance. In their concern about the impact of the restriction on their clients, these organizations are joined by the remaining *amici*, all of whom fear the impact of the restriction on the most vulnerable in our society and reject the notion that lawyers for the poor must operate according to a second-tier code of ethics and practice.

STATEMENT OF THE CASE

Amici curiae rely on the Statement of the Case submitted by Respondents Carmen Velazquez, *et al.*

SUMMARY OF ARGUMENT

In 1996, Congress took the unprecedented step of enacting legislation which prohibits LSC-funded lawyers from raising certain legal arguments on behalf of poor persons seeking public assistance. This legislation does not prohibit lawyers receiving federal funds from representing poor persons seeking public assistance. *See* Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504(a)(16); 110 Stat. 1321-55 at 1321-55 to 1321-56 (the "1996 Act") ("[The provision] shall not be construed to preclude a recipient from representing an individual eligible client who is seeking specific relief from a welfare agency if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation"). Rather, it prohibits lawyers from raising certain arguments on those persons' behalf. In particular, the legislation prohibits LSC-funded lawyers from "initiat[ing] legal representation or participat[ing] in any other way, in litigation, lobbying, or rulemaking, involving an effort to reform a Federal or State welfare system." *Id.* *Amici* refer to the prohibition herein as the "welfare restriction" or the "restriction," and arguments which are prohibited pursuant to it as "restricted arguments."

Pursuant to the restriction, lawyers who receive LSC funds may represent individual clients seeking a broad variety of public benefits, but during the course of such representation may not apprise courts of constitutional or statutory infirmities in the statutes or regulations that govern these programs. The restriction applies to representation of clients seeking benefits that include Supplemental Security Income, Medicaid, Food Stamps, Temporary Aid to Needy Families, and other categories of public assistance. *See* 45 C.F.R. § 1639.2 Thus, those affected by the restriction

include poor children and elderly persons, disabled persons, and poor mothers with dependent children.

As is set forth in Part I below, the welfare restriction intrudes directly into the manner in which lawyers represent their clients, imposing limits that are inconsistent with prevailing professional standards and impeding lawyers' ability to provide effective and zealous representation. As a consequence, LSC-funded lawyers are required to provide representation that is second-tier, because they must restrict the scope of representation in a manner that would otherwise be impermissible, forego arguments despite their professional judgment of the value of those arguments, and deny clients the authority to make decisions otherwise entrusted to clients under the applicable ethical rules.

As is set forth in Part II, the pernicious effects of the restriction are particularly severe in rural areas of the country, where the poor have no real choice but to accept restricted representation by LSC-funded lawyers because there are no alternative sources of civil legal representation. In addition, the restriction has the effect throughout the country of impeding the lawful progress of welfare reform, because it prevents lawyers from apprising state agencies and courts of inconsistencies between new laws and regulations, on the one hand, and state or federal statutory and constitutional requirements, on the other. As a result, the restriction threatens the integrity of our legal system as a whole, leaving entire bodies of law to develop in a manner that is inconsistent with federal and state constitutions and governing statutes. For all of these reasons, *amici* respectfully submit that the judgment of the Court of Appeals should be affirmed.

ARGUMENT

I. THE WELFARE RESTRICTION FORCES LSC-FUNDED LAWYERS TO PROVIDE REPRESENTATION THAT IS INCONSISTENT WITH ORDINARY PROFESSIONAL STANDARDS.

In creating the Legal Services Corporation, Congress made clear its intention that LSC-funded lawyers should serve in accordance with ordinarily applicable professional standards. *See* Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378 (1974), 42 U.S.C. § 2996(6) ("[A]ttorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession."); *id.* § 2996e(b)(3) (LSC "shall not, under any provisions of this subchapter, interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association . . . or abrogate as to attorneys assisted under this subchapter the authority of a state or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdictions. . . . [LSC] shall ensure that activities under this subchapter are carried out in a manner consistent with attorneys' professional responsibilities."); *id.* § 2996f(a)(1) (LSC must "insure the maintenance of the highest quality of service and professional standards, the preservation of attorney-client relationships, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to eligible clients."). The welfare restriction, however, is completely at odds with these prior congressional directives, because it makes it impossible for LSC-funded lawyers to represent

welfare recipients or applicants in a manner that is consistent with ordinary professional standards.

The tension between lawyers' ordinary professional responsibilities and the welfare restriction stems from the fact that the restriction assumes that cases in which constitutional and statutory claims will need to be raised constitute a discrete category of cases that can be identified in advance. *See Velazquez v. Legal Servs. Corp.*, 164 F.3d 757, 775 (2d Cir. 1999) (Jacobs, J., dissenting) ("The statute nowhere contemplates that an LSC-funded lawyer appear in a case in which he or she must forbear from challenging a welfare statute on meritorious grounds; to the contrary, the proviso says that a lawyer or grantee may not take on such a representation in the first place."). This assumption is erroneous. The reality is that legal arguments are not so easily segregated. Constitutional and statutory claims arise not just in "test" cases or "broad-based litigation challenging welfare reform," *Brief for Petitioner Legal Services Corporation* at 16, but also in run-of-the-mill cases on behalf of individual litigants.

Individuals seeking representation to challenge the denial or termination of public assistance benefits may possess a variety of potential legal claims, some of which may be unrestricted – such as challenges to the evidentiary basis of an administrative decision or to an agency's interpretation of the governing regulation or statute – and some of which may be restricted – such as challenges to the legality of the statute or regulation itself. Lawyers, however, will not necessarily be able to identify the precise mix of these claims at the outset of representation, before they have gathered facts about the case and investigated the applicable law. *Cf. Nix v. Whiteside*, 475 U.S. 157, 190 (1986) (Stevens, J., concurring) ("From the perspective of an appellate judge, a particular fact may be as clear and certain

as a piece of crystal or a small diamond. A trial lawyer, however, must often deal with mixtures of sand and clay. Even a pebble that seems clear enough at first glance may take on a different hue in a handful of gravel."). Some constitutional claims, for example, those implicating the fairness of the process itself, arise only after representation has commenced. *See, e.g., Ortiz v. Eichler*, 794 F.2d 889, 895 (3d Cir. 1986) (challenge to state's consideration of adverse statements from declarants unavailable for cross-examination at fairness hearings); *Meachem v. Wing*, 77 F. Supp.2d 431 (S.D.N.Y. 1999) (challenge to adequacy of state processes for reviewing denial of Food Stamps, Medicaid, and cash assistance benefits). Other claims necessarily take form only after there has been an initial agency or court decision interpreting the particular regulation or statute at issue. *See, e.g., Baylor v. New Jersey Dep't of Human Servs.*, 235 N.J. Super. 22 (N.J. Super. Ct. App. Div. 1989) (necessity of challenging welfare regulation not apparent until after fair hearing).

The fact that every state in the nation is currently undergoing enormous change in its welfare laws increases both the complexity of the issues facing lawyers in public assistance cases and the likelihood that a constitutional or statutory argument, although not immediately apparent, will arise in a particular case. Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996), which replaced the AFDC program with a block grant program called Temporary Assistance for Needy Families ("TANF"), the states now have wide discretion with respect to the provision of general public assistance, and the majority are creating entirely new welfare systems. State TANF programs around the country have statutory requirements covering a range of subjects, including extensions of time limits, exemptions from work requirements, and treatment of

earned and unearned income. *See, e.g.*, Urban Institute, *One Year After Welfare Reform: A Description of State Temporary Assistance for Needy Families (TANF) Decisions as of October 1997* (1998) (describing differences among the 50 states in rules governing eligibility, time limits, work requirements, and benefit amounts for TANF programs); Center for Law and Social Policy and the Center on Budget and Policy Priorities, *State Policy Documentation Project,* (visited July 12, 2000) <http://www.spdp.org> (providing comprehensive side-by-side comparisons of states' TANF rules). Meanwhile, federal statutes continue to govern certain assistance programs such as Food Stamps and Supplemental Security Income, and the Medicaid program continues to contain both state and federal statutory mandates. Thus, the law governing public assistance is more complex than ever. *Cf. Richardson v. Perales*, 402 U.S. 389, 399 (1971) ("The Social Security Act['s] . . . administrative structures and procedures, with essential determinations numbering into the millions, are of a size and extent difficult to comprehend.") (citation omitted); *DeJesus v. Perales*, 770 F.2d 316, 321 (2d Cir. 1985) (Friendly, J.) (Medicaid statute is of "unparalleled complexity"); *Rehabilitation Ass'n of Virginia v. Kozlowski*, 42 F.3d 1444, 1450 (4th Cir. 1994) ("There can be no doubt but that the statutes and provisions . . . involving the financing of Medicare and Medicaid, are among the most completely impenetrable texts within human experience.").

In the present climate of welfare reform, to provide effective representation, lawyers who represent public assistance claimants more than ever before must consider whether the regulations or state statutes affecting their clients are consistent with constitutional and legislative requirements. However, as set forth above, as a practical matter, lawyers cannot always identify in advance and refuse representation to prospective clients who could and should

raise such arguments. Accordingly, LSC-funded lawyers must operate vis-à-vis their clients seeking public assistance according to rules unfamiliar to the ordinary practice of law. That is, if they are to represent individuals seeking public assistance, LSC-funded lawyers must advise potential clients, in accordance with the welfare restriction, that their representation may not include claims that a welfare reform statute or regulation is unlawful. Having obtained clients' assent to this condition, LSC-funded lawyers representing applicants for benefits would then forego available legal challenges to the governing laws and regulations, even if the lawyers concluded as a matter of independent professional judgment that such legal arguments would best serve their clients' interests.

Setting these terms for the representation of welfare claimants contravenes the most fundamental professional standards. The restriction, in effect, requires lawyers to agree to provide representation that might well become incompetent, in contravention of lawyers' responsibility to provide competent and zealous representation. *See* Model Rules of Professional Conduct Rule 1.1 ("A lawyer shall provide competent representation to a client."); Model Code of Professional Responsibility EC 6-1 & 7-1. *Cf. Evans v. Jeff*, 475 U.S. 717, 728 (1985) (legal aid attorney, like every other attorney, has an ethical duty "to serve his clients loyally and competently"). That is, in cases in which competent counsel would argue that claimants were denied public assistance benefits to which they were entitled because of defects in the applicable statutes or regulations or constitutionally-flawed processes, LSC-funded lawyers would be required to ignore those arguments. Similarly, in cases in which competent counsel would argue that statutes or regulations, if interpreted in ways that disadvantage clients, raise constitutional problems, LSC-funded lawyers would be required to forego those arguments, and thus be

unable to effectively draw on the well-established principle that "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988); *see also NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 508-09 (1979).

It would, of course, be professionally impermissible for lawyers to render such substandard representation in the absence of assent from clients; it is no less improper for lawyers to do so pursuant to conditions imposed at the outset of representation. *See, e.g.*, Model Rules of Professional Conduct Rule 1.2, Comment ("An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1 [which requires a lawyer to provide competent representation to a client] . . ."); Comm. on Professional Ethics, N.Y. State Bar Ass'n, Op. 664 (1994) (lawyer may give legal advice over telephone only if, *inter alia*, "the limited representation [does] not materially impair the client's rights").

Moreover, the welfare restriction authorizes lawyers to define the terms of the representation in a manner that denies clients authority to make decisions ordinarily entrusted to clients. Lawyers who undertake to represent clients in administrative or judicial proceedings are generally obligated to comply with their clients' directions to make non-frivolous legal arguments that go to the heart of the clients' claims or defenses. *See, e.g.*, New York Lawyers' Code of Professional Responsibility, EC 7-7 & 7-8. Therefore, if welfare claimants direct their lawyers to

challenge the relevant laws, regulations or procedures, based on counsel's advice that the legal arguments are potentially meritorious and would best promote the clients' lawful objectives, lawyers ordinarily have a professional obligation to comply.

Professional standards, in New York and elsewhere, ordinarily bar lawyers from requiring clients to relinquish this authority at the outset of the representation. *See, e.g.,* Comm. on Professional Ethics, N.Y. State Bar Ass'n, Op. 719 (1999) (matrimonial lawyer may not condition representation on client's agreement to withdraw from the representation if client fails to follow all the lawyer's instructions and advice or fails to approve and engage the expert recommended by the lawyer). Yet, the welfare restriction forces precisely this type of concession from clients.

The impropriety of limiting representation to exclude restricted arguments, irrespective of lawyers' professional judgment as to their value and clients' direction, is compounded by three additional concerns: first, the restriction emanates from a third party that is funding the representation; second, as a practical matter, clients have no alternative source of representation; and third, clients are unable to make an informed choice as to the consequences of accepting the restricted representation.

The first of these additional concerns is, perhaps, the most grave. In general, lawyers may not "serve two masters." The duty to provide clients undivided loyalty ordinarily prevents lawyers from compromising the quality of their representation or the independence of their judgment based upon who is paying the fee. *See, e.g.,* Model Rules of Professional Conduct Rule 1.8(f)(2) (a lawyer may not accept compensation from a third party for representing a

client unless "there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship"); Model Rules of Professional Conduct Rule 2.1 ("In representing a client, a lawyer shall exercise independent professional judgment"). *Cf. Polk County v. Dodson*, 454 U.S. 312, 321 (1981) (lawyer must exercise independent judgment regardless of pressures from third party who "recommends, employs, or pays him to render legal services to another").

That welfare claimants have, as a practical matter, no alternative source of legal representation, *see* Part II *infra*, compounds the ethical problems raised by the restriction. Ordinarily, in situations in which lawyers seek clients' consent to depart from the conventional rules governing attorney conduct (*e.g.*, to represent multiple clients or to disclose client confidences), lawyers may not secure client consent by coercion or take advantage of pressure from other sources. Where, as will generally be true, public assistance applicants are put to the choice of either LSC-funded, restricted representation or no representation at all, clients' decisions to forego otherwise available legal arguments cannot truly be viewed as voluntary and thus are not ordinarily countenanced by our legal system. *See, e.g.*, Comm. on Professional and Judicial Ethics, Association of the Bar of the City of New York, Formal Op. 2 (1997) (minor client's consent to disclose confidences must be voluntary, which is unlikely to be the case if "the minor perceives, accurately or not, that in the absence of consent, he will not be able to secure legal assistance").

Third, and finally, prior to the outset of representation, welfare claimants simply cannot make a reasonably informed decision whether to be represented subject to the welfare restriction. Ordinarily, when the representation of clients may be limited by lawyers'

responsibilities to others, lawyers may not take on clients unless they first conclude that the representation will not be adversely affected and then consult with the clients concerning the relevant benefits and risks. *See, e.g.* Model Rules of Professional Conduct Rule 1.7(b). Here, however, prospective clients must decide whether to retain LSC-funded lawyers, subject to the welfare reform restriction, without a meaningful understanding of the consequences of that decision.

This dilemma is particularly grave because of the danger that the doctrine of claim preclusion may prevent welfare recipients who accept the services of LSC-funded lawyers from raising restricted arguments in separate actions. That is, even if clients are able to find unrestricted counsel to help them raise restricted claims in separate proceedings, because those proceedings would arise from the same termination or denial of benefits, the doctrine of claim preclusion could well prevent clients from splitting claims in this fashion. *See* Restatement (Second) of Judgments, §24 (1982) (final judgment extinguishes all claims against a defendant "with respect to all or any part of the transaction or series of connected transactions out of which the action arose"); *id.* § 25 (final judgment extinguishes all claims even if plaintiff is prepared to present "grounds or theories of the case not presented in the first action").[2] *Cf. Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 485 (1982).

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[2] Although many jurisdictions recognize an exception to the doctrine of claim preclusion based on jurisdictional limitations of the first forum, *see* Restatement (Second) of Judgments § 26(1)(c); *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373 (1985), *amici* are aware of no jurisdictions that allow litigants to avoid the consequences of claim preclusion due to restrictions that funders have placed on counsel's ability to raise claims.

LSC-funded lawyers who undertake to represent clients seeking public assistance, initially believing, perhaps, that their cases do not raise statutory or constitutional claims, also run afoul of ordinary professional standards if it later appears that restricted arguments should or must be made. In such situations, LSC-funded lawyers would have two options, neither of which accords with ordinary professional standards. One possibility is to terminate the representation. Having commenced legal engagements, however, lawyers are limited in their authority to end them. Unless there are other lawyers available to step in, which will rarely be the case in this context, *see* Part II, *infra*, lawyers may not seek to withdraw unless there is good cause to do so. *See, e.g.*, Model Rules of Professional Conduct Rule 1.16(b)(6). Good cause for terminating representation, however, has never before included a standing directive from a third party, here the government, that lawyers may not make viable legal arguments that their clients desire them to make and that, as a matter of professional judgment, they believe ought to be made in order to promote the clients' lawful objectives. [3]

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[3] After the 1996 Act went into effect, Florida Rural Legal Services, Inc., an LSC-funded entity, made arrangements to transfer approximately 300 immigration cases that, pursuant to the 1996 Act, it could no longer undertake, to the Legal Aid Society of the Orange County Bar Association, a non-LSC funded entity. However, because the Orange County Bar Association did not receive funding to establish an immigration project until September 1996, and did not staff the project until January 1997, these cases were not transferred – and no work was done on them – for a period of at least six months. Legal Services Corporation, *Office of the Inspector General, Compliance with Selected Regulations Performance Audit, Final Audit Report No. AU96-063C* (Sept. 1997). The Florida example demonstrates that, even if there is an alternative organization to which restricted cases may be transferred, clients are prejudiced by their original lawyers' inability to continue their representation by, among other problems, concomitant delays.

The other possibility is to continue to represent the client but to decline to make the restricted legal argument, without the clients' knowledge and consent, over the clients' objection, or pursuant to client consent secured by a threat to terminate the representation. Any of these approaches contravenes the ordinary responsibilities of lawyers to render competent representation, Model Rule 1.1; to accede to clients' lawful direction with respect to decisions entrusted to clients, *see, e.g.*, New York Lawyers' Code of Professional Responsibility, EC 7-7 & 7-8; and to act in clients' best interests and in accordance with clients' lawful objectives. New York Lawyers' Code of Professional Responsibility, DR 7-101(A)(1) & EC 7-9.

In sum, the welfare restriction forces LSC-funded lawyers to provide representation that may prove to be incompetent and to restrict representation in a manner that would otherwise be impermissible.[4] Although LSC-funded lawyers who provide representation pursuant to the restriction do not necessarily engage in sanctionable misconduct, they certainly do not provide representation

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[4] In an opinion issued in anticipation of the 1996 Act, the ABA opined that LSC-funded lawyers could represent clients in welfare cases, asking clients to agree in advance to restrictions on the scope of the representation necessitated by funding restrictions, if the lawyers believed "that there is only a small chance that practice restrictions will adversely affect a representation in the future." ABA Comm. on Ethics and Professional Responsibility, Formal Op. 399 (1996). The ABA opinion, of course, did not opine that the restriction was consistent with ordinary professional standards. Significantly, in an analysis issued after the restriction went into effect, the Association of the Bar of the City of New York concluded that the restriction was inconsistent with basic principles of professional responsibility. It specifically found that the restriction was in conflict with lawyers' responsibilities to exercise independent professional judgment and to provide competent representation. *See* Association of the Bar of the City of New York, *A Call for the Repeal or Invalidation of Congressional Restrictions on Legal Services Lawyers*, 53 The Record No. 1 13, 54-59 (1998).

consistent with ordinary professional standards. Accordingly, *amici* respectfully submit that this Court should reject the welfare restriction's *de facto* redefinition of LSC-funded lawyers' professional responsibilities in cases involving public assistance.

II. THE SCARCITY OF ALTERNATIVE CIVIL LEGAL REPRESENTATION GIVES THE POOR LITTLE CHOICE BUT TO ACCEPT RESTRICTED REPRESENTATION AND THREATENS THE LAWFUL PROGRESS OF WELFARE REFORM.

If there were ample alternative sources of civil legal representation for the poor, the conflict between the welfare restriction and lawyers' ordinary professional responsibilities perhaps would not be cause for such great concern. However, the reality is that there are not sufficient alternative sources of representation, and in fact in certain parts of the country there is practically *no* other source of civil legal representation. As a consequence, low-income persons in need of legal assistance with respect to public benefits have little choice but to accept representation from LSC-funded lawyers, governed by the welfare restriction, and LSC-funded lawyers have little choice, as a practical matter, but to accept such cases. At a time when the nation's welfare laws are in an unprecedented state of flux, the restriction does damage not only to low-income clients and LSC-funded lawyers, but also to the evolution of the laws with respect to public assistance. That is, at precisely the time when states are engaged in sweeping welfare reform, and are thus in need of assistance in assuring that state legislative and constitutional directives are complied with, those lawyers most able to provide such assistance, on account of their caseload and expertise, are prohibited from bringing to light constitutional and statutory infirmities in new laws and regulations and thus assisting in the lawful progress of welfare reform.

That alternative sources of civil legal representation for the poor are insufficient to compensate for a loss of LSC funding in the public assistance area is not seriously

contested. Current studies find that between 70 and 90 percent of low-income persons' legal needs already are not being met. Legal Services Corporation, *Strategic Directions 2000-2005* 1 (Jan. 2000) ("*LSC Strategic Directions*") ("Of those needing legal assistance, it is estimated that less than one out of four have access to a lawyer."); Legal Services Corporation, *Serving the Civil Legal Needs of Low-Income Americans, A Special Report to Congress* 12 (Apr. 2000) ("*LSC Special Report*") (citing legal needs studies done by Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Missouri, Nevada, New York, and Virginia).[5]

Local legal services programs report that, due to limited resources, they are forced to turn away tens of thousands of people with critical legal problems. *LSC Special Report* at 13. In 1993, when funding for legal services was higher than it is today, programs reported that a lack of resources required them to turn away nearly half of those seeking assistance. *Id.* In sum, funding for legal services for the poor, even given the contribution by LSC, does not come close to meeting existing need.

If one excludes LSC moneys, which comprise approximately 39 percent of funds for civil legal services nationally, the picture becomes even bleaker. *See* American Bar Association, Committee on Legal Aid and Indigent

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[5] *See also* American Bar Association, *Legal Needs and Civil Justice: Major Findings from the Comprehensive Legal Needs Study* 23 (1994) (71 percent of low-income households' legal needs not met); The Florida Bar, *Access to the Legal System* (July 1999) (80 percent of state's legal needs not met); D. Michael Dale, *The State of Access to Justice in Oregon, Part I: Assessment of Legal Needs (Draft Report)* (March 2000) (83 percent of state's legal needs not met); Wisconsin Trust Account Foundation, *What Is Needed* (1996) (90 percent of state's legal needs not met).

Defendants and The National Legal Aid & Defender Association, *The SPAN Update: A Guide to Legal Services Planning* (Jan. 1999) (*"SPAN Update"*), also available at <http://www.abanet.org/legalservices/span.html>. It would be difficult to overstate the importance of LSC funds to legal services in rural states in particular. For example, Alabama and Mississippi together are home to a poverty population of nearly 1.5 million people. Legal Service Corporation, *LSC Funded Programs* (1999), available at <http://www.lsc.gov>. In these states, LSC provides over 90 percent of the funds for legal services for the poor. *LSC Special Report* at 8; *SPAN Update*. In another four states, Arkansas, New Mexico, South Dakota, and Wyoming, the LSC grant constitutes over 80 percent of the funding available for legal services. *LSC Special Report* at 8. In 16 other states, LSC funds constitute over 50 percent of available funds. *Id.* Thus, in a total of 22 states, the majority of funds available for civil legal services for the poor comes from the Legal Services Corporation. As a consequence, poor persons in these states in need of representation with respect to public assistance are unlikely to obtain representation that is not subject to the welfare restriction.

Moreover, this is true not only in these 22 states, but also in many others where the availability of substantial non-LSC funds for civil legal services suggests, inaccurately, that the poor have an option of unrestricted representation with respect to public assistance. The numbers are deceptive because non-LSC funds are often targeted to specific categories of cases that do not include public assistance. For example, although many states appropriate funds for civil legal services, most limit the funds to cases concerning elder law, domestic violence, or family law. *See* American Bar Association, Committee on Legal Aid and Indigent Defendants Project to Expand Resources for Legal Services, *A Chart of Significant Fundraising Activities for Legal*

Services ("PERLS") (1999 ed.), also available at <http://www.abanet.org/legalservices/PERLS.html> (citing earmarked funds in Arizona, Colorado, Georgia, Oklahoma, and West Virginia).[6] Similarly, many states have limited the use of court filing fees and fines, an additional source of funds for civil legal services for the poor, to cases involving family law and domestic violence, or to a finite group of those seeking public assistance such as the elderly or children. *See id.* (describing funds in Illinois and Montana); *see also* 705 Ill. Stat. § 130/15; Mont. Code Ann. § 3-2-714; N.C. Gen. Stat § 7A-474.3 (limiting use of state funds to certain categories of cases, and specifically excluding representation of clients between the ages of 21 and 60 seeking public assistance). Finally, even where non-LSC funds may be used in public assistance cases, they do not necessarily hold the key to unrestricted representation. For example, in Texas, filing fee funds may be used in public assistance cases, but only where an individual is "expressly eligible" for benefits by statute or regulation. Vernon's Tex. Stat. & Codes Ann. § 51.943.

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[6] In general, many states' restrictions on the use of funds for civil legal services closely parallel those at the federal level. *See, e.g.*, Ind. Code § 33-2.1-11-4(3) (prohibiting class actions, redistricting work, lobbying, political training, or prisoner work); Md. Code 1957, Art. 10 § 45J (no class actions, lobbying, or fee-generating cases); Tenn. Code. Ann. § 16.3-808(c) (no class actions); Vernon's Tex. Stat. & Codes Ann. § 51.943 (no class actions, lobbying, acceptance of attorneys' fees, or representation of undocumented immigrants); Wash. Rev. Code Ann. § 43.08.260 (no lobbying, class actions, fee-generating cases, representation of undocumented aliens, or training programs). Overall, the trend among the states appears to be toward more, rather than fewer, restrictions on funds for legal services. Indeed, if this Court upholds the welfare restriction, it would not be surprising if states began to impose it on their funds as well. *See, e.g.*, Adrienne Schisow, *Measure Restricting Legal Aid Withdrawn*, The Daily Progress (Charlottesville, Va.), March 5, 2000, at B1, B3 (reporting that the sponsor of a Virginia State Senate bill to impose all LSC restrictions on state funds for legal services intended to reintroduce the bill in the next session).

Even if there is a source of funds for unrestricted representation in public assistance cases, however, there must also be lawyers who will take public assistance cases. Thus, the existence of non-LSC funds that can be used in public assistance cases – even to make restricted arguments – is only half of the equation. In order for those funds to be used to assist low-income persons with legal problems related to public assistance, not subject to the welfare restriction, there must be lawyers or legal organizations that do not receive LSC funds.[7]

This is because even funds that are not initially subject to the welfare restriction become subject to it when they come into the hands of any LSC-funded entity. Under the 1996 Act, LSC recipients may use "funds received from a source other than the Legal Services Corporation to provide legal assistance, [but] such funds may not be expended by recipients for any purpose prohibited by this Act." 1996 Act,

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[7] Interest on Lawyers' Trust Accounts ("IOLTA") also is a major source of non-LSC funding for legal services. Nationwide, IOLTA funds are responsible for approximately 16 percent of funding for civil legal services. *See SPAN Update.* In thirteen states and the District of Columbia, IOLTA proceeds are responsible for over 50 percent of the non-LSC funds available for legal services. *Id.* Of course, the future of IOLTA is uncertain. *See Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998) (interest on client funds in IOLTA accounts is clients' private property for Takings Clause purposes). However, even if IOLTA endures as a source of non-LSC funds for legal services, it too is vulnerable to state restrictions. *See, e.g., Rules Governing the Operation of the Texas Equal Access to Justice Foundation,* Rules 13, 15 (prohibiting use of IOLTA funds in fee generating cases and class actions); Pa. Stat. Ann. tit. 62, § 4027 (no use of IOLTA funds for fee generating cases or lobbying). In addition, as set forth below, IOLTA funds are subject to the LSC restrictions in the hands of any LSC-funded entity.

§ 504(d)(2)(B). In order to use non-LSC funds for restricted purposes, such as providing unrestricted representation in a case involving public assistance, an LSC-funded entity must create a separate affiliate organization that meets LSC's onerous program integrity regulations, set forth in 45 C.F.R. § 1610, and transfer the non-LSC funds to that organization. In practice it has proven very difficult for LSC-funded organizations to do this, especially in those parts of the country where non-LSC funds and non-LSC-funded lawyers are most limited.[8] The reason for this difficulty is plain: the costs of setting up an organization that meets LSC's requirements of "objective integrity and independence" are prohibitive. *Id.* For example, in addition to requiring affiliate organizations to maintain separate accounting and timekeeping records from any LSC-funded entity, LSC's program integrity regulations require affiliates to have entirely separate physical facilities and personnel. *Id.* § 1610.8.

Thus, due to the program integrity regulations, non-LSC funds can be used in a region to provide restricted legal services only where there is a pre-existing non-LSC entity capable of taking over restricted cases, or to the extent that the funds exceed the costs of creating an entirely new

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[8] The statistics compiled by the American Bar Association and the National Legal Aid and Defender Association, based on data provided by state legal services personnel and set forth in the *SPAN Update*, confirm that there is presently no unrestricted legal services provider in 21 states (Alabama, Alaska, Arkansas, Colorado, Georgia, Hawaii, Indiana, Iowa, Kansas, Louisiana, Maryland, Mississippi, Missouri, North Dakota, Oklahoma, Rhode Island, South Dakota, Utah, Wisconsin, and Wyoming) – *i.e.*, a legal services entity that does not receive LSC funds. In each of another 14 states (Idaho, Kentucky, Maine, Montana, Nebraska, Texas, Vermont, Virginia, and West Virginia), there is only one unrestricted legal services entity. *SPAN Update* (print version current to Jan. 1999, web site updated continuously and last visited July 12, 2000).

organization and paying for the rent, utilities, library, staff salaries, and supplies for that organization. *Amici* are aware of only a few states in which LSC-funded organizations have attempted or are attempting to create a program affiliate in conformity with LSC's program integrity regulations (*i.e.*, Virginia, Oregon, Alaska, and Ohio).[9] None of these attempts have been in the six states in which LSC funding constitutes over 80 percent of the total funding for civil legal services for the poor. *See* discussion, *supra* at 20. As a consequence, in these states, and in many others, there are no reliable sources of unrestricted legal services for the poor. *See* note 8, *supra*.

Moreover, even in states with substantial non-LSC funds as a percentage of total funding for legal services for the poor, individuals in remote areas who do not happen to live in proximity to an unrestricted entity have little chance of obtaining the assistance of a lawyer who is not bound by the LSC restrictions. *See* David S. Udell, *The Legal Services Restrictions: Lawyers in Florida, New York, Virginia and Oregon Describe the Costs*, 17 Yale L. & Pol'y Rev. 337, 366 (1998) (LSC's program integrity regulations make it "virtually impossible to provide full representation to people living in outlying communities"). For example, in Georgia there are several rural agricultural counties with fewer than five practicing lawyers, and at least one county with no attorney at all. Legal Services Corporation, *Erlenborn Commission Report* 33 (2000) <http://www.lsc.gov.pressr/pr_pi.html> (visited July 12,

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[9] Only two of these organizations – in Alaska and Oregon – received formal approval from LSC of the proposed affiliate relationship. *See* November 19, 1998 letter from Legal Services Corporation to Oregon Legal Services Corporation and September 16, 1999 letter from Legal Services Corporation to Alaska Legal Services Corporation, on file with counsel for *amici*.

2000) (*"Erlenborn Report"*). Because there are no paid public defenders in these rural areas, the lawyers who are asked to provide *pro bono* civil legal services for the poor already bear the burden of providing criminal defendants with their constitutional right to counsel. *Testimony of Georgia Legal Services Program Executive Director Phyllis Holmen before the U.S. Commission on Civil Rights* 5 <http:// www.ganet.org/ga_bar/gls.html> (visited July 12, 2000).

The same is true in rural areas of other states, since as a general matter, not-for-profit legal organizations and private law firms that undertake civil *pro bono* work tend to be concentrated in urban areas. *See Erlenborn Report* at 34-35 (non-profit legal organizations not a feasible alternative to LSC-funded representation in Arkansas, Kentucky, New Mexico, and Texas because there are no such entities in rural areas).[10] Accordingly, the poor in rural states and remote areas of urbanized states have very little chance of obtaining civil legal representation for assistance with public benefits that is not subject to the welfare restriction.

The harmful effect of the welfare restriction will not be felt solely by low-income persons and LSC-funded lawyers. To the contrary, as welfare reform unfolds across

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[10] That legal services providers in some cities and states with relatively ample resources have abandoned entirely the notion of creating LSC affiliate organizations, and have instead established dual, wholly separate delivery systems for legal services – one system taking LSC funds, and the other not – is, of course, of no help to those in areas where resources are not sufficient to support two systems, or in remote areas where an unrestricted legal services entity is inaccessible. *See, e.g.*, Catherine C. Carr & Alison E. Hirschel, *The Transformation of Community Legal Services, Inc. of Philadelphia: One Program's Experience Since the Federal Restrictions*, 17 Yale L. & Pol'y Rev. 319 (1998) (describing the extensive costs of creating a wholly separate delivery system in Philadelphia that would not take LSC funds).

the country, judicial review is necessary to evaluate the legality of new laws and regulations in each and every state.[11] Cases raising restricted claims that have been successfully litigated by not-for-profit legal organizations since the welfare restriction went into effect bear out the common sense notion that new state welfare laws and regulations must be reviewed to assure that they are faithful to state and federal constitutional and legislative directives. *See, e.g., Saenz v. Roe*, 526 U.S. 489 (1999) (striking down California law limiting public assistance to persons newly arrived in the state to the benefits in the state from which they had come); *Maldonado v. Houstoun*, 157 F.3d 179 (3d Cir. 1998) (striking down Pennsylvania law providing lesser benefits to new residents); *Hicks v. Peters*, 10 F. Supp.2d 1003 (N.D. Ill. 1998) (striking down Illinois residency requirement for benefits); *Smith v. Commissioner of Transitional Assistance,* 729 N.E.2d 627 (Ma. 2000) (striking down regulation governing extensions of benefits to mothers with dependent children beyond specific time limit, where regulation was inconsistent with state statutory requirements); *Weaver v. New Mexico*, 945 P.2d 70 (N.M. 1997) (striking down New Mexico regulation restricting

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[11] One need not look far for examples of cases litigated by federally-funded lawyers for the poor prior to 1996 which demonstrate the significance for the lawful administration of welfare programs of constitutional and statutory arguments of the kind that are prohibited by the restriction. *See, e.g., Sullivan z. Zebley,* 493 U.S. 521 (1990); *Blum v. Bacon*, 457 U.S. 132 (1982); *Califano v. Westcott,* 443 U.S. 76 (1979); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Shapiro v. Thompson*, 394 U.S. 618 (1969); *King v. Smith*, 392 U.S. 309 (1968); *Dion v. Commissioner, Maine Dep't of Human Servs.*, 933 F.2d 13 (1st Cir. 1991); *McCoy v. State Dep't of Health and Welfare*, 907 P.2d 110 (Idaho 1995); *Tucker v. Toia*, 371 N.E. 2d 449 (N.Y. 1977). *See generally* Susan E. Lawrence, *The Poor in Court, The Legal Services Program and Supreme Court Decision Making* (1990); Barbara Sard, *The Role of Courts in Welfare Reform*, 32 Clearinghouse Rev. 367 (Aug./Sept. 1988).

general assistance benefits to those with disabilities to twelve months as inconsistent with Americans with Disabilities Act).

While some restricted cases will continue to be brought by not-for-profit organizations and the private bar in urban areas, the resources and geographic reach of these entities are not sufficient to provide representation in the many cases around the country in which a constitutional or statutory argument is necessary. For the same reasons that LSC was needed in the first place – to provide civil legal representation on a national basis where private legal aid was inadequate – unrestricted legal representation continues to be necessary on a national basis, especially as new welfare laws are implemented in each and every state.

In the "Statement of Findings and Declaration of Purpose" that accompanied the Legal Services Corporation Act of 1974, Congress acknowledged that "for many of our citizens, the availability of legal services has reaffirmed faith in our government of laws." 42 U.S.C. § 2996(4). The 1996 Act's welfare restriction stands in direct conflict with this principle. Whereas the LSC Act originally funded lawyers who could draw on the full extent of their professional skills, consistent with our government of laws, to advance their clients' interests and ensure that federal and state laws were enforced, the welfare restriction denies LSC-funded lawyers the ability to competently represent their clients in cases in which legal principles of interest to society as a whole are at stake. Not only does the restriction harm clients, but it skews the development of the law affecting those clients in a way that will leave state and federal constitutional and legislative requirements unfulfilled. In so doing, it threatens the orderly implementation of welfare reform across the nation and the very integrity of our judicial system.

CONCLUSION

The welfare restriction forces lawyers who receive funds from LSC to provide representation in public assistance cases in a manner inconsistent with ordinary professional standards. It requires lawyers to, in some instances, provide less than competent representation, restrict the scope of representation according to impermissible terms, and deny clients the authority to make decisions otherwise entrusted to clients. In light of the scarcity of alternative sources of civil legal representation for the poor, particularly in rural states and in remote areas of all states, many low-income persons have little choice but to accept restricted representation, and LSC-funded lawyers have little choice but to provide it, rather than turn away persons seeking assistance with respect to benefits. As a consequence, not only does the restriction require low-income persons to accept second-tier legal representation and leave them with few ways to enforce their constitutional and statutory rights, but it threatens the lawful progress of welfare reform throughout the nation. For all of these reasons, *amici curiae* respectfully urge the Court to affirm the judgment of the Court of Appeals.

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APPENDIX A
STATEMENTS OF INDIVIDUAL *AMICI CURIAE*

The New York State Bar Association is the largest voluntary state bar association in the country, consisting of 67,000 members. Among the Association's purposes are facilitating the administration of justice and promoting the highest standards of professionalism among attorneys.

The Association of the Bar of the City of New York is a 21,000 member organization, founded in 1870, which addresses issues of law, legal ethics and public policy at the local, national and international levels.

The New York County Lawyers' Association, founded in 1908, currently has almost 9,000 members. It sponsors activities including *pro bono* programs, continuing education and public forums, and has consistently supported funding for legal services and the independence of the judiciary.

The Oregon State Bar, established in 1935, is a mandatory bar organization with approximately 11,100 active members. It administers a legal services program through which state court filing fee revenues are collected and distributed to fund legal services for the poor throughout the State of Oregon. In so doing, it seeks to ensure that funded legal service providers deliver a broad range of high quality legal services to low-income Oregonians in a cost-effective and efficient manner. It therefore has an interest in ensuring that the legal services providers it funds can provide the full range of representation other lawyers can provide for clients. Issue-based restrictions on the scope of representation imperil the Oregon State Bar Legal Services Programs' mission to provide high quality representation to all low-income

Oregonians in the most cost-effective and efficient manner possible.

The Pennsylvania Bar Association is a voluntary bar association founded in 1895. It has over 27,000 members.

The Vermont Bar Association was founded in 1878 to, among other things, promote reform in the law and to facilitate the administration of justice.

The Brooklyn Bar Association, established in 1872, has 2,400 active members, including members of the judiciary and practicing attorneys. For ten years, it has maintained a separate organization, the Brooklyn Bar Association Volunteer Lawyers Project, Inc., committed to providing indigent clients with *pro bono* civil representation.

The Chicago Council of Lawyers, formed in 1969, is a public interest bar association with 1,200 members. Within its mission to improve the administration of justice, the Council seeks to increase the access to justice of all persons.

The Essex County Bar Association, incorporated in 1898, has a membership of 3,000 attorneys in Essex County, New Jersey. It has a long-standing involvement with and commitment to issues as they relate to the delivery of legal services to the poor.

The Lesbian and Gay Law Association of Greater New York, Inc. ("LeGaL") is a 20 year-old professional association of the lesbian, gay, bisexual, transgender legal community in the New York metropolitan area with almost 500 members. Many LeGaL members are Legal Services lawyers.

The Women's Bar Association of the State of New York ("WBASNY") is the largest bar association in the United States specifically devoted to the advancement of the rights of women and ensuring equality and fair treatment for women. WBASNY is concerned about the detrimental and disproportionately harmful impact the LSC restriction will have upon women.

The Association of Legal Aid Attorneys ("ALAA"), UAW Local 2325, founded in 1969, has 800 members employed as staff attorneys at the Legal Aid Society of New York City. Comprised of lawyers who defend the constitutional rights of the poor, ALAA is committed to defending against all attacks on constitutional rights.

The Legal Aid Society of New York City is the oldest and largest provider of free civil legal services to indigent clients in the United States. The Society serves as counsel every year to thousands of individuals and families who challenge the denial of state or federal public assistance benefits. To permit the Society to represent its clients adequately in the wake of the welfare reform restriction, the Society turned down over $1.2 million in federal LSC funding in 1996.

The National Organization of Legal Services Workers, UAW Local 2320, is a labor organization composed of attorneys, paralegals and support staff employed by public interest organizations that provide civil and criminal representation to indigent clients.

The Center for Ethics and Public Service at the University of Miami School of Law is an interdisciplinary project devoted to the values of ethical judgment, professional responsibility and public service in law and society.

The Center for the Teaching of Legal Ethics was established at the William & Mary Law School in 1995 to foster the creative and effective teaching of legal ethics.

The Jacob Burns Center for Ethics in the Practice of Law at the Benjamin N. Cardozo Law School sponsors courses, programs, and events that provoke dialogue and critical thought on ethical and moral standards and issues of professional responsibility. A central focus of the Ethics Center is working to increase access to justice for all persons.

The Louis Stein Center for Law and Ethics, based at Fordham University School of Law, sponsors programs, develops publications, and supports scholarship on contemporary issues of law and ethics. In recent years, the Stein Center and affiliated Fordham University Law School faculty have examined ongoing developments in federal welfare law, professional and ethical issues in the work of lawyers for low-income clients generally, and the implications of LSC funding restrictions on these lawyers' work in particular.

AARP is a nonprofit membership organization of more than 34 million persons age fifty and older dedicated to addressing the needs and interests of older Americans. In recognition of the significant need of the low-income older population for legal representation, AARP has consistently supported LSC programs and opposed the imposition of unreasonable restrictions that hamper the abilities of LSC lawyers and advocates to adequately and ethically represent the interests of their clients.

The Children's Defense Fund ("CDF"), a private nonprofit organization supported by foundations, corporate grants, and individual donations, exists to provide a strong and effective voice for the children of America who cannot vote, lobby, or

speak for themselves. CDF pays particular attention to the needs of poor, minority, and disabled children.

The Legal Counsel for the Elderly, Inc. ("LCE"), is a non-profit organization which is sponsored by the AARP Foundation and AARP. Currently, LCE receives no funding from the Legal Services Corporation. LCE annually provides free and reduced fee legal services to about 7,000 residents of the District of Columbia, including residents of nursing homes and group homes.

The Mexican American Legal Defense and Educational Fund ("MALDEF") is a national nonprofit organization established in 1968. Its principal objective is to protect and promote the civil rights of the over 29 million Latinos living in the United States, particularly in the areas of education, employment opportunities, political access, public resource equality, education and immigration.

The National Association of Protection and Advocacy Systems ("NAPAS") is a membership organization for the nationwide system of protection and advocacy (P & A) agencies. P & As are mandated under various federal statutes to provide legal representation and related advocacy services on behalf of all persons with disabilities in a variety of settings and often work closely with LSC-funded lawyers in their advocacy efforts.

The National Center on Poverty Law, located in Chicago, provides support nationally to advocates for low-income people through communications, journals, a poverty law library, and a web site. The Center has a small staff of attorneys who provide representation to Illinois residents on policy and systemic issues in the fields of welfare reform, workforce, public housing and community building. The Center receives no Legal Services Corporation funds. While

the Center is able to represent low income Illinoisans on policy issues related to aspects of welfare reform in a limited number of class actions or legislative or administrative initiatives, it is not able to undertake all or even most of these matters that are currently ripe for activity.

The National Partnership for Women and Families ("National Partnership") is a nonprofit, national advocacy organization that promotes fairness in the workplace, quality health care, and policies that help women and men meet the dual demands of work and family. Established in 1971 as the Women's Legal Defense Fund, the National Partnership has worked to advance the rights and interests of women – especially low-income women and women of color – and their families.

The National Senior Citizens Law Center is a key resource for lawyers, advocates and national, state and local officials working on a wide range of issues affecting the elderly. It engages in policy advocacy and works with a nationwide network of advocates and lawyers to provide quality advice and service to older Americans and all low income individuals.

The NOW Legal Defense and Education Fund ("NOW LDEF") is a leading national nonprofit civil rights organization that performs a broad range of legal and educational services aimed at eliminating gender-based discrimination and securing equal rights for women and girls. NOWLDEF has vigorously litigated cases advocating on behalf of low-income women, including *Saenz v. Roe*, 526 U.S. 489 (1999).

People for the American Way Foundation ("People For") is a nonpartisan, education-oriented citizens' organization established to promote and protect civil and constitutional

rights. Founded in 1980 by a group of religious, civic and educational leaders devoted to our nation's heritage of tolerance, pluralism and liberty, People For now has over 300,000 members nationwide. People For has joined in filing this *amicus* brief because of the important legal principles at stake in this case, including access to our legal system, the rule of law, and First Amendment speech protection.

The Welfare Law Center seeks to protect the constitutional and legal rights of the intended beneficiaries of welfare programs. Since its founding in 1965 it has litigated numerous welfare cases, including *Goldberg v. Kelly*, 397 U.S. 270 (1970) and *Califano v. Westcott*, 443 U.S. 76 (1979), holding various welfare procedures and policies unconstitutional. The restriction challenged herein imposes great pressure upon the Center, which receives no federal funds, to provide far more representation than its privately-donated resources will allow.

The Coalition of California Welfare Rights organizations, Inc. ("CCWRO") is a coalition of welfare rights organizations. The majority of the Board of Directors are current and former welfare recipients. CCWRO represent recipients in over 600 administrative appeals annually, files litigation on behalf of welfare recipients, and provides legislative advocacy on behalf of welfare recipients.

The Federation of Protestant Welfare Agencies, Inc., founded in 1922, is an umbrella and intermediary support organization for 250 diverse New York social service agencies that serve approximately 1.5 million people of all ages, races, and faiths. Throughout its history, the Federation has advocated and championed humane social welfare policies as well as lawful and fair welfare administration.

Housing Works is the nation's largest provider of housing and services for homeless people who are living with AIDS and HIV. It currently provides services to approximately 2,000 people every year.

Low-Income Families' Empowerment Through Education ("LIFETIME") is a grassroots organization created by student mothers at the University of California Berkeley who completed college degrees while raising their families on welfare, and who are committed to helping other low-income parents accomplish the same.

The Massachusetts Welfare Rights Union ("MWRU"), organized in 1989, is a chapter of the National Welfare Rights Union. MWRU is comprised primarily of low-income members and is committed to fighting for social and economic justice in the United States.

The Mon Valley Unemployed Committee grew out of a grassroots response to the high levels of unemployment in Southwestern Pennsylvania in the early 1980s. With over 2,000 members, it continues to advocate for and assist unemployed and underemployed workers, including those on welfare.

The National Campaign for Jobs and Income Support is a national network composed of 25 grass-roots membership organizations with affiliates in 40 different states. It is dedicated to helping low-income persons gain access to living wage jobs and to preserving a social safety net sufficient to keep low-income families out of poverty.

The North Brooklyn Welfare Education & Community Advocacy Network ("WE CAN"), founded in 1996, is a coalition of community-based groups dedicated to the

struggle for justice, equality, and real opportunities for people receiving public assistance. WE CAN provides services and support to neighborhood residents who need a safety net and those struggling to move from welfare to work.

The Reform Organization of Welfare ("ROWEL") is a Missouri social justice organization of over 1,800 people with low incomes and allies working to reduce poverty and prejudice through advocacy and education.

Welfare Warriors, based in Wisconsin, is a group of mothers in poverty fighting for the lives of mothers and children and dedicated to the creation of a government-guaranteed child support program. It has 600 members nationwide.